IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.104 OF 1988

Shri Mukundraj Panachand Dholkia ...Appellant
Vs.
The Spl. Land Acquisition Officer ...Respondent

WITH
FIRST APPEAL NO.1033 OF 1988

The State of Maharashtra ...Appellant
Vs.
Mukundrai Panchand Dholkia ...Respondent

WITH
FIRST APPEAL NO.105 OF 1988

M/s. The Needrumbre Industries Pvt. Ltd.
through its Director Shri Manubhai Vithal
Patel, Dist. Raigad. ...Appellant
Vs.
The Spl. Land Acquisition Officer ...Respondent

WITH
FIRST APPEAL NO.106 OF 1988

Shri Mulaji Damaji Rana ...Appellant
Vs.
The Spl. Land Acquisition Officer ...Respondent

WITH
FIRST APPEAL NO.107 OF 1988

Shri Premlal Motilal Munoth ...Appellant
Vs.
The Spl.Land Acquisition Officer ...Respondent

WITH
FIRST APPEAL NO.108 OF 1988

Shri Pannalal Motilal Munoth ...Appellant
Vs.
The Spl.Land Acquisition Officer ...Respondent

WITH
FIRST APPEAL NO.109 OF 1988

Smt Rati Keki Irani & Ors. ...Appellants
Vs.
The Spl.Land Acquisition Officer ...Respondent

WITH

FIRST APPEAL NO.880 OF 1988

The State of Maharashtra
(At the instance of Spl.Land
Acquisition Officer) ...Appellant
Vs.
Smt Rati Keki Irani & Ors. ...Respondents

WITH

FIRST APPEAL NO.874 OF 1988

The State of Maharashtra
(At the instance of Spl.
Land Acquisition Officer) ...Appellant
Vs.
Shri Mulaji Damaji Rana ...Respondent

AND

FIRST APPEAL NO.881 OF 1988

The State of Maharashtra
(At the instance of Spl.
Land Acquisition Officer) ...Appellant
Vs.
Shri Pannalal Motilal Munoth ...Respondent

Mr Dilip Bagawe with Mr Deepak Salvi and Ms Swapnali Kelkar appearing for the Appellant and Mr K.K. Tated, A.G.P. for the Respondents in First Appeal Nos.104 of 1988, 105 of 1988, 106 of 1988, 107 of 1988, 108 of 1988 and 109 of 1988.

Mr K.K. Tated, A.G.P. for the Appellant and Mr Dilip Bagawe with Mr Deepak Salvi, Ms Swapnali Kelkar appearing for the Respondents in First Appeal Nos.880 of 1988, 874 of 1988, 881 of 1988 and 1033 of 1988.

CORAM : A. S. OKA, J.
DATE : MARCH 14, 2006.

JUDGMENT:

1. Heard the learned Advocates appearing for the parties. These Appeals can be disposed of conveniently by a common judgment. These Appeals arise out of Judgments and Awards passed by the learned Civil Judge, Senior Division, Raigad at Alibag in reference proceedings under Section 18 of the Land

Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). The lands which are the subject-matter of these Appeals are situated at village Roadpali (Ambetakhar), Panvel, Kamothe in Taluka Panvel, District Raigad. The lands subject-matter of these Appeals were notified for acquisition by issuing notification under Section 4 of the said Act of 1894 on 03rd February, 1970. The lands subject-matter of these Appeals have been acquired for planned development and utilisation of lands in Trans Harbour Panvel and Trans Thane Creek area for industrial, commercial and residential purposes and for developing twin city of New Bombay.

2. The Appeals in group can be divided into three categories. (i) Category I- First Appeal Nos.104, 105, 1033 of 1988 pertaining to lands from village Roadpali (Ambetkhar), (ii) Category II- First Appeal Nos.106, 109, 880, 874 of 1986 pertaining to lands from village Panvel and (iii) Category III- First Appeal Nos.107, 108, 881 of 1988 pertaining to lands from village Kamothe. These villages are from Taluka Panvel, District Raigad. The First Appeal Nos.1033, 880, 874, 881 are preferred by the State praying for reduction in compensation and rest of the Appeals are by the original claimants for enhancement in compensation.

3. The learned Counsel appearing for the original claimants while dealing with cases in Category I has placed reliance on a decision of Division Bench of this Court in First Appeal No.113 of 1988 with First Appeal No.877 of 1988 decided on 09th June, 2001. A submission was made that a similar land from the same village Roadpali (Ambetakhar) which was acquired under notification under section 4 of the said Act of 1894 published on 03rd February, 1970 (published on 04th February, 1970) for the same purpose was subject-matter of the said Appeal. After considering the evidence on record, this court came to the conclusion that the market value of the land was Rs.25/- per sq.mtr. on the relevant date i.e. on 04th February, 1970. This Court directed that the development charges of 20% shall be deducted from the market value while making calculations regarding payments to be made. As Award under Section 11 of the said Act of 1894 in relation to the land involved in the said Appeal was made before 30th April, 1982, this Court held that the claimants will not be entitled to compensation under Section 23(1-A) of the said Act of 1894. The learned Counsel pointed out that the State Government has accepted the decision of the Division Bench of this Court in the sense that the same has not been challenged. Based on the same decision another Division Bench by Judgment and Order dated 16th

October, 2001 in First Appeal No.112 of 1988 and other connected Appeals fixed the market value at the rate of Rs.25/- per sq.mtr. for the land situated in the same village which was also notified on 03rd February, 1970 under the section 4 of the said Act of 1894. It was submitted that even said decision has attained finality. The submission is that on the basis of the said decisions the claimants are entitled to market value at the rate of Rs.25/- per sq.mtr.

4. In so far Category II and III is concerned, the learned Counsel appearing for the claimants placed reliance on a decision of a Division Bench of this Court dated 25th February, 1993 in First Appeal No.754 of 1986 and other connected Appeals. He submitted that in case of the lands acquired under the notification dated 03rd February, 1970 for New Bombay Project, lands from the villages in Category II and III i.e. village Panvel and Kamothe, this Court fixed market value between Rs.20/- per sq.mtr. to Rs.25/- per sq.mtr. He pointed out that this decision has also attained finality.

5. Shri Tated, the learned A.G.P. appearing for the State submitted in one of the Appeals i.e. First Appeal No.106 of 1988 the claim made by the original claimant in response to notice under Section 9 of the said Act of 1894 was at the rate of Rs.20/- per

sq.yard. Relying upon certain decisions of the Division Bench of this Court he submitted that the said claimants will not be entitled to claim enhancement at the rate which is more than Rs.20/- per sq.yard. Shri Tated fairly sated that the decisions of the Division Bench relied upon by the Advocate for claimants has attained finality. He, therefore, stated that the said decisions are certainly relevant for deciding these Appeals as the lands subject matter of these Appeals are more or less similar to lands subject matter to those decisions.

6. I have considered the submissions. In all these Appeals except in case of First Appeal No.106 of 1988, the original claimants made a claim at the rate of Rs.25/- per sq. mtr. in response to the notice issued under section 9 of the said Act of 1894. In case of First Appeal No.106 of 1988 which arises out of the Land Acquisition Reference No.36 of 1981, the original claimants had made a claim at the rate of Rs.20/- per sq.yard. Shri Tated invited my attention to a decision of the Division Bench of this Court in First Appeal No.710 of 1989 (Sate of Maharashtra Vs. Govind Goma Gowari & Ors.). By the said decision dated 22nd September, 2005, the Division Bench came to the conclusion that Section 25 of the said Act of 1894 is not merely a procedural provision but it is substantive provision and therefore, the amendment

which was made to the said Section 25 by the Land Acquisition (Amendment) Act, 1894 will not have retrospective application and the same will not apply to the Reference Applications which were pending on the 24th September, 1989 i.e. on the date on which the amending Act came into force. The view taken by the Division Bench is that in a Reference under section 18 of the said Act of 1894, the claimant cannot claim any amount more than what has been claimed by him in response to notice under Section 9 of the said Act of 1894. In view of this position, it is obvious that in First Appeal No.106 of 1988 the claimant cannot claim compensation at the rate more than Rs.20/- per sq. yard i.e. Rs.23.80 per sq.mtr.

7. I have gone through the decision of the Division Bench of this Court in First Appeal No.113 of 1988 which was delivered on 09th June, 2001. This Court has fixed market value at the rate of Rs.25/- per sq.mtr. for more or less similarly situated lands subject matter of group I which were notified for acquisition on the same dated i.e. 03rd February, 1970. The Division Bench, however, directed that from the market value 20 per cent amount will have to be deducted on account of the development charges. The decision of the Division Bench in First Appeal No.113 of 1988 has been rendered in case of similarly situated land which was acquired by the Section 4

notification of the same date. The said decision becomes relevant for deciding these First Appeals. Adopting the rate of market value fixed in the said decision in case of lands in group I (i.e. First Appeal Nos.104, 105 and 1033 of 1988), the market value will have to be fixed at the rate of Rs.25/- per sq.mtr. However, deduction of 20% will have to be made on account of development charges.

8. Now turning to the lands in Group II and III, the decision of a Division Bench of this Court in First Appeal No.754 of 1986 and another Appeals is certainly relevant. The Division Bench has noted that villages Panvel and Kamothe are adjoining villages which are located near Bombay-Pune Highway which is one of the busiest highway in the country. The lands subject matter of Appeals before the Division Bench were also acquired for New Bombay Project under a preliminary notification dated 03rd February, 1970. The Division Bench divided the lands into groups depending upon its distance from the highway or Zilla Parishad road and fixed market value at the rates between Rs.20/- to Rs.25/- per sq. mtr. There is no reason as to why the said decision of the Division Bench should not be followed while determining market value of lands in Group II and III.

9. The land subject matter of First Appeal Nos.1033 and 104 of 1988 is touching the Bombay-Pune Road. The Division Bench in the aforesaid decision has fixed market value at the rate of Rs.25/- per sq. meter to the lands abutting highway. Therefore, in case of this land the rate will have to be fixed at Rs.25/- per sq.mr. The land subject matter of First Appeal Nos.106 and 879 of 1988 is located at a distance of 350 sq.mtrs. from Bombay-Pune Road. The market value of this land will have to be fixed at Rs.23/- per sq. mtr. as the Division bench fixed market value at the said rate for lands upto distance of 800 meters from highway. The land subject matter of First Appeal No.109 of 1988, First Appeal No.880 of 1988, First Appeal No.108 of 1988 and First Appeal No.88 of 1988 are situated abutting the Bombay-Pune Road. Hence, in this case rate of Rs.25/- per meter will have to be fixed. The same is the case with land subject matter of First Appeal No.107 of 1988. All these lands were agricultural lands on the relevant date. Therefore, deduction of 20% will have to be made on account of development charges.

10. In all these cases the Award under Section 11 of the said Act of 1894 has been made prior to 30th April, 1982. In view of well settled law, the claimants will be entitled to benefit of sub-section 2

of section 23 and section 28 of the said Act of 1894 as amended in the year 1984. However, they will not get benefit of interest under Section 23(1-A). To that extent the appeals by the State Government will have to be allowed. Therefore, the Awards made by the Reference Court will have to be suitably modified.

11. Hence, I pass the following order:

FIRST APPEAL NO.104 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation by calculating the market value at the rate of Rs.25/- per sq. mtr. However, while computing the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) It is clarified that the possession of the acquired land was taken on 03rd May, 1973.

(iv) The Appellant will be entitled to

proportionate costs throughout.

(v) Necessary calculations as regards amount payable to the Appellant will be made by the Reference Court.

FIRST APPEAL NO.1033 OF 1988

(i) In view of the order passed in First Appeal No.104 of 1988, this Appeal is partly allowed with no orders as to costs.

FIRST APPEAL NO.106 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation by calculating the market value at the rate of Rs.23.00/- per sq. mtr. However, while calculating the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) The Appellant will be entitled to proportionate costs throughout.

(iv) Necessary calculations as regards amount payable to the Appellant will be made by the Reference Court.

FIRST APPEAL NO.107 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation by calculating the market value at the rate of Rs.25/- per sq. mtr. However, while calculating the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) The Appellant will be entitled to proportionate costs throughout.

(iv) Necessary calculations as regards amount payable to the Appellant will be made by the

Reference Court.

FIRST APPEAL NO.105 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation by calculating the market value at the rate of Rs.25/- per sq. mtr. However, while calculating the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) The Appellant will be entitled to proportionate costs throughout.

(iv) Necessary calculations as regards amount payable to the Appellant will be made by the Reference Court.

FIRST APPEAL NO.109 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation

by calculating the market value at the rate of Rs.25/- per sq. mtr. However, while calculating the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) The Appellant will be entitled to proportionate costs throughout.

(iv) Necessary calculations as regards amount payable to the Appellant will be made by the Reference Court.

FIRST APPEAL NO.880 OF 1988

(i) In view of the decision in First Appeal No.109 of 1988, this First Appeal is partly allowed with no orders as to costs.

FIRST APPEAL NO.874 OF 1988

(i) In view of the decision in First Appeal No.106 of 1988, the Appeal is partly allowed with no

orders as to costs.

FIRST APPEAL NO.108 OF 1988

(i) The Appeal is partly allowed. It is held that the Appellant will be entitled to compensation by calculating the market value at the rate of Rs.25/- per sq. mtr. However, while calculating the compensation, twenty per cent of the market value will be deducted on account of the development charges.

(ii) In addition to market value, the Appellant will be entitled to statutory benefits under Section 23(2) and Section 28 of the said Act of 1894.

(iii) The Appellant will be entitled to proportionate costs throughout.

(iv) Necessary calculations as regards amount payable to the Appellant will be made by the Reference Court.

FIRST APPEAL NO.881 OF 1988

(i) In view of the decision in First Appeal No.108

of 1988, the First Appeal is partly allowed with no orders as to costs.

JUDGE